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Centre for Corporate Law

MONTHLY CORPORATE LAW UPDATES (FEBRUARY, 2022)

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TABLE OF ABBREVIATIONS

ABBREVIATIONS	FULL-FORM
AA	Adjudicating Authority
A&C Act	The Arbitration and Conciliation Act, 1996
AO	Administrative Officer
CCI	Competition Commission of India
CD	Corporate Debtor
CE Act	Central Excise Act, 1944
CEO	Chief Executive Officer
CIRP	Corporate Insolvency Resolution Process
CJDL	CJ Darcel Logistics Ltd
CoC	Committee of Creditors
Companies Act	Companies Act, 2013

TABLE OF ABBREVIATIONS

ABBREVIATIONS	FULL-FORM
Competition Act	Competition Act, 2002
CSR	Corporate Social Responsibility
DDTU	Dumper and Dumper Truck Union
DG	Director General
HC	High Court
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code 2016
IPO	Initial Public Offering
IRP	Interim Resolution Professional
LLP	Limited Liability Partnership
LLPIN	Limited Liability Partnership Identification Number
Ltd	Limited

TABLE OF ABBREVIATIONS

ABBREVIATIONS	FULL-FORM
MCA	Ministry of Corporate Affairs
MD	Managing Director
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NSE	National Stock Exchange
ORDNC	Order of Regional Director Not Complied
PNB	Punjab National Bank
Pvt	Private
RIL	Rathi Ispat Limited
RP	Resolution Professional
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SC	Supreme Court
SEBI	Securities and Exchange Board of India

INSOLVENCY AND RESTRUCTURING LAW

JUDGEMENTS

1 NCLAT allows distribution of cash balance of the CD among creditors and lenders [IDBI Bank Limited v. Abhijit Guhathakurta Liquidator of EPC Constructions (India) Ltd.]

S. 53 of the IBC provides for a 'waterfall mechanism' to repay the debts of the creditors and lenders of the CD according to a specific order of priority. The NCLAT in this case dealt with an appeal against the NCLT's order, wherein the NCLT did not allow the cash balance of the company to be used to repay the creditors and lenders according to S. 53. The reasoning behind the NCLT's decision was that it would derogate the value of the company.

The NCLAT disagreed with this reasoning and reversed the decision of the NCLT. Instead, it placed a condition on the members of the CoC, that they must give an undertaking to return any amount that they have been paid in excess to their entitlement, in order to ensure that the company's value does not derogate.

(Order available here.)

2 Punishment for contravention of resolution plan under S. 74(3) of IBC does not impose vicarious liability [Krish Steel and Trading Private Limited & Ors. v. State of NCT of Delhi & Anr.]

S. 74(3) of the IBC imposes a punishment of imprisonment of 1-5yrs and a fine of 1lakh-1crore or both in the event that the CD, its officers, creditors or any other such person contravenes or abets in the contravention of the terms of the resolution plan. The present case dealt with the situation where not just the CD but even the promoters and directors were summoned for proceedings before the NCLT under S. 74(3). The question before the NCLAT was whether the NCLT was correct in its decision to disregard the concept of vicarious liability by summoning the promoters and directors of the CD.

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The NCLAT overturned the NCLT's decision of summoning not only the CD but even the promoters and directors, as it held that S. 74(3) does not impose vicarious liability. It held that the promoters and directors cannot be summoned individually as the complaint was only filed against the company.

(Order available here.)

3 Prospective application of notification that changed the minimum amount of default to file a CIRP claim depends on the existence of default [Tharakaran Web Innovations Pvt. Ltd. v. National Company Law Tribunal Kochi Bench & Anr.]

Notification No. S4/1205 of the MCA was published on 24.03.2020 whereby the minimum amount of default to file a CIRP was increased from Rs. 1 lakh to Rs. 1 crore. In the present case, the question before the NCLAT was whether the prospective application of this notification should depend on the defaulted amount or the date of the default.

The NCLAT stated that the existence of the default is the deciding factor to initiate a CIRP. The date of default is immaterial if there is a 'default' that exists as per the IBC. The NCLAT reiterated that the primary purpose of the IBC is to protect the rights of the CD and its creditors. Therefore, if a default exists on the date of filing an application for CIRP of a CD, it can be entertained by the AA.

(Order available here.)

4 Even a 'purchaser' is considered an 'operational creditor' under the IBC [Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited]

An 'operational debt' is a claim in respect of the provision of goods and services and an 'operational creditor' is a person to whom an operational debt is owed. The question before

the apex court was whether the NCLAT was correct in narrowly defining the scope of an operational creditor by excluding a purchaser of goods or services as an 'operational creditor'.

The SC rejected the NCLAT's narrow interpretation and stated that a purchaser of goods or services is also an 'operational creditor' as per the IBC. The apex court stated that the definition of an operational creditor merely requires some nexus of connection with goods and services; there is no specification as to who the supplier or receiver is. The definition was interpreted in a broad way to include situations when the operational creditor may receive services from the CD. The apex court stated that the operational creditor may be the receiver of goods or services from the CD as well. Therefore, the apex court has given a wider interpretation by including even 'purchasers' as 'operational creditors'.

(Order available here.)

5 Resolution Plan has a binding effect in the intervening period between the CoC's approval and the AA's approval [Union Bank of India v. Mr. Kapil Wadhwan & Ors.]

A resolution plan submitted by the RP after the CoC's approval is a product of the commercial wisdom of the CoC. They have unfettered discretion to exercise their commercial wisdom while taking decisions regarding how the CD should repay its debts. What effect or binding value this resolution plan has during the intervening period between the CoC's approval and the AA's approval pursuant to S. 31 of the IBC was the question that the NCLAT was faced with in this case.

At the outset, the NCLAT reiterated the settled position of law that a resolution plan cannot be construed as a 'contract' during the intervening period between the acceptance of the CoC and the AA's approval. The court opined that the entire process involved in

formulating the resolution plan is governed by the framework of the IBC. The NCLAT held that a resolution plan during the intervening period is binding inter se the CoC and the successful Resolution Applicant; this binding effect is derived from the IBC framework itself, and not by contractual principles. It is a product of the IBC's mechanisms. It stated that there exists no scope for negotiations between the parties once the resolution plan has been approved by the CoC. Therefore, the resolution plan has a binding effect even before approval by the AA.

(Order available here.)

6 Mere absence of physical disbursement of money does not mean the creditor is not a 'financial creditor' or that a 'financial debt' does not exist under the IBC; Prior invocation of Arbitration Proceedings against the Guarantor does not bar the initiation of CIRP against the Corporate Debtor Company [Mr. Rashpal Singh Todd v. Volkswagen Finance Pvt Ltd and Ors.]

There were two questions before the NCLAT in this case. First, whether the creditor in this case was a 'financial creditor' who was owed 'financial debt' according to the IBC when there was no actual disbursement of money; and second, whether prior invocation of arbitration proceedings against the personal guarantor bars the initiation of CIRP against the CD.

The NCLAT answered the first question in the positive. A 'financial debt' is defined in the IBC as a debt along with interest which is disbursed against the consideration for the time value of money. A 'financial creditor' under the IBC is a person to whom 'financial debt' is owed. The NCLAT stated that mere absence of a bank statement to show the physical disbursement of money from the creditor's bank account to the CD does not mean the debt lacks the characteristics of a 'financial debt'. It stated that the requirement of disbursement has been met against the consideration for time value of money as the agreements between the CD and the creditor had facilitated it.

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With regards to the second question, the NCLAT stated that the option of multiple remedies being available to the creditor is central to a contract of guarantee. It reiterated the settled law that the guarantor's liability is co-extensive with that of the principle debtor. The fact that arbitration proceedings were instituted against the personal guarantor does not bar the creditor from filing an application under the IBC before the AA. Both those proceedings have a separate meaning and the sole requirement to be met to file a case against the CD under the IBC is the existence of a default.

(Order available here.)

AMENDMENT

7 IBBI amends Regulation 18 and Regulation 39A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016

The IBBI has amended two regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulations 18 and 39A will be completely substituted for the new regulations released by the IBBI. The amendment is effective from 9th February 2022.

Regulation 18 deals with the meetings of the committee. The RP has the authority to call for meetings subject to certain conditions, which are laid down in Regulation 18. Before this amendment came in, there was no express provision or guidelines which empowered the RP to exercise his/her powers to put forth a proposal of the members of the CoC during the meeting. The newly amended Regulation 18 empowers the RP to place a proposal received from the members of the CoC in the meeting, if he deems it necessary and if this proposal has been given by members representing at least 33% of the voting rights. The key stakeholders of this change will be the members of the committee themselves, as they can now put proposals in a meeting with 33% vote share.

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Regulation 39A on the other hand deals with the guidelines for the IRP/RP regarding the preservation of records. Records here refer to the documents of relevance in the CIRP of the CD. Previously, the IRP/RP had broad guidelines with respect to the preservation of the records relating to the CIRP of a CD according to the record retention schedule as communicated by the IBBI with the consultation of the Insolvency Professional Agencies. The amendment to Regulation 39A has made the guidelines much more streamlined and has laid down the specific instances in which the IRP/RP must preserve records.

Apart from this, the new regulations have also prescribed that an electronic copy of all records (physical and electronic) must be kept for at least 8 years and a physical copy for at least 3 years from the date of completion of the CIRP. Additionally, these records must be preserved at a secure place, and he/she will be obliged to produce the records as may be required under the IBC or any regulations formed thereunder. This amendment has given much more clarity regarding the preservation of records of the CIRP.

(Regulation available here.)

SECURITIES LAW

PRESS RELEASE

1 SEBI modifies separation of Chairperson and MD/CEO from mandatory to voluntary basis.

In the year 2017, SEBI had set up Kotak Committee on Corporate Governance to seek recommendations for the enhancement of corporate governance standards in India. The Committee recommended the separation of the roles of the Chairperson and Managing Director (MD)/Chief Executive Officer (CEO) in the listed companies. The rationale behind the mandate was to improve corporate governance and to prevent excessive concentration of powers in one individual. Additionally, SEBI aimed to put India at par with global standards and be in accordance with global corporate governance rules.

Pursuant to the recommendations, SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 were amended in 2018. It mandated the top 500 listed entities to ensure the chairperson of the board of directors is not related to the MD or CEO of the company from April 1, 2020. Further, a two-year extension was provided by SEBI in this regard.

However, it was found that only 54% of the top 500 companies have so far adhered to the rule. Additionally, SEBI continues to receive various reasons and difficulties from industry bodies and companies for not being able to abide by this rule. Promoter driven companies have massively resisted to the rules as the separation of roles would pose a massive challenge in bringing major changes to the leadership position of those companies.

On account of such factors, SEBI has decided to modify the mandatory requirement to voluntary basis. This decision by SEBI has been welcomed by industry bodies and companies as it would provide flexibility to the management and leadership practices.

(Press Release available here.)

SECURITIES LAW

ORDER

2 SEBI final order against Chitra Ramakrishna and others

A few months ago, SEBI unraveled National Stock Exchange (NSE) co-location scam. Turns out, the previous order not only unveiled the co-location scam. However, it brought to light a spiritual force that ran the NSE! While investigating the NSE co-location matter, SEBI stumbled upon certain mails from Chitra Ramakrishna to an unknown person.

In a surprising turn of events Chitra Ramakrishna mentioned that the person was a 'spiritual force' who has been guiding her from 20 years. Sensitive information ranging from promotions to appointments were divulged by Chitra Ramakrishna to the so-called spiritual force.

To this, she sought the defense of sharing of information with a spiritual person as not compromising confidentiality or integrity. However, SEBI stated that it was absurd on Chitra Ramakrishna's part to argue that sharing of sensitive information such as business plans, performance appraisals, etc. causes no harm. Most surprising of all, SEBI's order revealed that the NSE officials had the knowledge of such exchange of information but had chosen to keep it hidden.

Holding them vicariously liable for the acts of omissions and commissions committed by the NSE, the SEBI imposed a monetary penalty of Rs 2 crore on NSE and Mr. Narain. Further, Ms. Ramakrishna and Mr. Subramanian have been imposed a penalty of Rs. 3 crore and Rs. 2 crores respectively. Additionally, NSE has been ordered not to launch any new product for the next 6 months.

(Order available here.)

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CONSULTATION PAPER

3 Disclosures for 'Basis of Issue Price' section in offer document under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

Lately, there has been an increase in filing of offer documents for IPOs. Moving from the traditional profit generating companies, the capital market is witnessing an active participation by new age technology companies (NATCs) in public issues. These NATCs generally remain loss making for a longer period before achieving break. Profitability is a time-taking deed for newly set up businesses. In its earlier stages a company is either pre-revenue generating or loss-making. Therefore, these NTACs companies generally lack the track record of having an operating profit before tapping into the Initial Public Offering (IPO) route to raise funds.

Now, listing comes with layers of disclosures by the issuer company. Specifically, the 'Basis of Issue Price' portion in the offer document hints appraises the investors of the profitability of the company with disclosures pertaining to traditional parameters such as earnings per share, net asset value, return on net worth etc. However, these disclosures could be dealt with by profit making companies only. The change in listing environment calls for pertinent disclosures. Smelling this change, SEBI seeks the addition of non-traditional parameters in the Basis of Issue Price section.

As per the Consultation Paper, SEBI desires to supplement the above-mentioned traditional parameters with certain non-traditional parameters pertinent to NTACs. These non-traditional parameters would include as follows:

- **Disclosure of Key Performance Indicators**

Key Performance Indicators reflect a measurable value that shows the progress of an

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organization. While a novel company may not be able to display profits, disclosure of key performance indicators would benefit both the company and the investors to trace the progress of the company.

- **Valuations based on past issuance**

Valuation of a company reflects its worth. It is common practice for new-age companies to raise several rounds of funding. While a novel company may not be able to display profits, disclosures on its valuation in previous rounds of funding would benefit the investors to determine the worth their potential investment.

The approach of the Consultation Paper would align the disclosures for NTACs with investor friendliness. Whether this proposition would become a law, public comments would decide.

(Consultation paper available here.)

COMPANY LAW

NOTIFICATION

1 MCA notifies Companies (Accounts) Amendment Rules, 2022

Corporate Social Responsibility (CSR) is a company's commitment to undertake philanthropic practices and policies in furtherance of societal goals. Under the Companies Act 2013 (Companies Act), it is a legal mandate for companies satisfying the eligibility criteria provided in the companies act. Moreover, a company is also required to file its annual statements without delay. The Companies (Accounts) Rules, 2014 deals with the filing of financial statements and the fees to be paid.

In the view of the same, the recent amendment provides that every company complying with the CSR norms is now mandated to furnish a report on CSR in Form CSR-2. The same needs to be filed as an addendum with other forms while filing the annual accounts. Form CSR-2 has to be filed separately on or before 31st March 2022 for the preceding financial year (2020- 2021).

(Notification available here.)

2 MCA notifies Limited Liability Partnership (Amendment) Rules, 2022

Limited Liability Partnership (LLP) is a form of business entity, which provides benefits of partnership firm and private limited company in one frame. LLPs are governed by the Limited Liability Partnership Act (LLP act). As per the LLP Act, an LLP is required to change its name if the central government finds it undesirable or it resembles name of any other corporate body. The name has to be changed within three months after the direction from the qualified authority. Furthermore, The LLP Rules, 2009 provides that any LLP which has a similar name to any other corporate body has to apply to the registrar for change of name through Form 23.

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The recent amendment to the LLP rules has been released. The Amendment present three-fold changes. First, pertaining to the allotment of the new name to existing LLPs, second concerning the appeal against order of adjudicating officer and third, regarding the registration of appeal and disposal of appeal by regional director.

Regarding the allotment of new name to existing LLPs, the amendment states that in a case where an LLP fails to change its name within three months, the letters – "ORDNC" (Order of Regional Director Not Complied), the year of passing of the direction, the serial number and the existing LLPIN of the LLP shall become the new name of the LLP.
Furthermore, the amendment talks about the adjudication of penalties. As per the LLP Rules 2014, in a case where an LLP is not carrying any business operations for a period of two or more years, its name can be strike off by the registrar. In accordance with the same, the new amendment has inserted a provision for adjudication of penalties in case of non-compliance. The Central government is empowered to appoint adjudicating officers for adjudging penalty.

Moreover, the amendment provides that an appeal can be made against the order of an adjudicating officer. The same has to be filed in writing with the Regional Director within a period of sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved party.

(Notification available here.)

ARBITRATION LAW

1 Court can remit the matter back to the arbitrator for a fresh reasoned award if both the parties have consented to the same: SC [Mutha Construction v. Strategic Brand Solutions (I) Pvt. Ltd.]

After the passing of an arbitral award in arbitral proceedings, if a party is aggrieved by the award, it can avail recourse under the Arbitration and Conciliation Act, 1996 (A&C Act). Any party aggrieved by the award can file an application to set aside the award. It can also request to remit the matter back to the arbitral tribunal to revise the award. If the court finds it appropriate, it can remit the matter back to the tribunal to allow the tribunal to resume the arbitral proceedings.

In the present case, after a dispute arose between the contracting parties, the matter was referred to arbitration and an award was passed regarding the same. Being aggrieved by the award, one of the parties filed an application to set aside the award. The award was set aside with the consent of both the parties. Consequently, the matter was remanded back to the arbitrator to pass a fresh reasoned award. The aggrieved party filed an application to seek a modification in the order and contested that the matter should not be remanded back to the same arbitrator. The question that unfurled before the SC in the present dispute was whether the court is empowered to remit the matter back to the arbitrator for a fresh reasoned award if both the parties have consented to the same.

The court observed that position of law is established in accordance with setting aside an award and remitting the same back to the arbitrator. As per the established principle, the court cannot set aside an award merely on the ground that no reasons have been provided and the matter cannot be remitted back to the arbitrator. The court maintained that an award can be set aside and remitted back only when the court decides the application on the basis of merits. Moreover, it held that even in a case where the award has been set aside, parties can still agree to fresh arbitration proceedings by the same arbitrator.

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In the present case, both the parties agreed to set aside the award and to remit the matter back to the arbitrator for a fresh reasoned award. Therefore, the SC held that once the order has been passed based upon the consent of the parties, it is not open for them to contend the matter irrespective of whether the matter has been remitted back to the same arbitrator.

(Judgement available here.)

2 If future claims are not considered in the CIRP, the right to claim the same does not get extinguished in the arbitration proceedings since it is not required for the court to adjudicate upon a contentious issue while relegating the parties to arbitration: Delhi HC [Bharat Petroresources Ltd. v. JSW ISPAT Special Products Ltd.]

As per the Arbitration and Conciliation Act, 1996 (A&C Act), parties in a dispute are free to decide upon a procedure of appointing arbitrator(s) of their choice. In a case where any party fails to fulfil its obligations as per the appointment procedure or the parties fail to reach an agreement, an application can be made to the court to take necessary measures. When deciding such an application, courts are only supposed to examine the existence of an arbitration agreement between the parties and take the required measure.

While the A&C act revolves around the arbitration agreement between the parties, its scope can be extended to the invocation of Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). Such a situation can arise because disputes between the contracting parties on defaulted debt obligations are a common sight in commercial transactions. In view of such a situation, the Delhi High Court (HC) recently addressed a question of law on the intersection between the Arbitration agreement and CIRP.

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In the present matter, after the parties entered into a contract, one of the parties called for cash assistance in order to undertake the contractual obligation. Aggrieved by the failure to receive the same, the party initiated CIRP under IBC. The aggrieved party claimed amounts before and after the initiation of CIRP. While the claim before the insolvency commencement date was admitted, the party was denied future claims which were accounted for after the initiation of CIRP. After the conclusion of CIRP, the aggrieved party invoked the arbitration clause of the agreement to avail future claims.

The question before the HC was whether the arbitration clause can be invoked to seek future claims when the same have been rejected during the CIRP.

Regarding the same, the HC reiterated the established reasoning that as a matter of default, the parties must be referred to arbitration. For the same, the courts only need to examine whether an arbitration agreement exists between the parties in the matter. Only in cases where it is manifestly clear that the disputes are absolutely superfluous and inessential in nature, the courts can refrain from referring the matter to arbitration. Furthermore, the HC said that the courts are not empowered to decide whether a contentious issue in the matter can be adjudicated or not while referring the matter to arbitration.

Thus, the court refrained to any contentious issue and directed the parties dissolve their disputes through arbitration. In the present matter, whether the right to claim future claims stand extinguished when the same was not considered in CIRP, is a contentious issue. With regard to the extinguishing of right to claim future debts with Resolution Plan in place, the court held that if future claims are not taken into consideration in the Resolution Plan, the right of the creditor to claim the same is not extinguished.

(Judgement available here.)

MISCELLANEOUS

CCI ORDER

1 CCI passes a cease-and-desist order against Dumper and Dumper Truck Union Lime Stone for breaching the Competition rules [CJ Darcel Logistics Ltd. v. Dumper and Dumper Truck Union Lime Stone and Another]

The agreements signed up between enterprises under the Competition Act (Competition Act, 2002) have been subject to various arbitrary conditions. The Competition Commission of India (CCI) has time and again reiterated certain agreements and practices which are anti-competitive in nature and can possibly cause an appreciable adverse effect on competition in the relevant Indian market.

In the present case, the CCI issued a cease-and-desist order against DDTU for violating the provisions of CA. The informant, CJDL engaged in a tender granted by JSW Energy (Barmer) Limited ("JSW") for the transportation of limestone from Sanu Mines, Jaisalmer, to the plant site of JSW at Bhadresh. In this regard, the pivotal contention raised by the informant was that DDTU restricted the informant to carry out the transportation work through its own vehicles. Additionally, it used physical force and coerced the informant into hiring the drivers from the DDTU only and that too at exorbitant rates.
The CCI stated that a prima facie case could be made out against DDTU and directed the DG to undertake investigation in the concerned matter. The DG laid forth a four-part test to determine whether a society is an "enterprise" under CA. Post investigation, it was concluded that DDTU had used its dominant position and violated the provisions of Competition Act.

Further, the fair-trade regulator held DDTU liable for engaging in anti-competitive agreements. It also ordered its members to cease and desist from malpractices which are prohibited under the Competition Act.

(Order available here.)

MISCELLANEOUS

2 Dues of secured creditor to have priority over the dues of the Central Excise Department [Punjab National Bank v. Union of India & Ors.]

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) provides a broad legal framework to make sufficient provisions for the repayment of the debts and to gain possession of the security. Section 35 of the Act lays down that its provisions will have an overriding effect on all the other laws. On the other hand, the CE Act lays down that all excisable commodities made or produced within India must be taxed.

In the present case, around 15 crores were charged against Rathi Ispat Limited (RIL) as excise duty demand and its land and buildings were also confiscated. PNB, being the secured creditor, had issued notice to RIL under the provisions of SARFAESI Act for failing to clear its 2005 loans. The pivotal contention in the case was whether the dues of the Excise department would have priority over the dues of the Secured Creditors.

In this regard, the Supreme Court noted that prior to the incorporation of Section 11E, there was no provision for the First Charge on the Assessee's or any other person's property in the CE Act. The provisions of the SARFAESI Act are binding on Section 11E of the CE Act.

The Apex Court held that debts of banks, that is the secured creditor, would be prioritized over the dues of the central excise department under the SARFAESI Act. The SC also opined that a confiscation order quashed as a security interest attached to the same property cannot be accepted.

(Order available here.)

MISCELLANEOUS

3 No frustration of contract arises due to mere commercial hardships caused by the pandemic [Suneesh K. v. Travancore Devascom Board & Other]

The COVID-19 pandemic led to serious repercussions on the contracts in India. The Indian Contract Act lays down the provision of frustration of a contract. A contract becomes frustrated when after the execution of a contract, the performance of an act becomes difficult or unlawful. Whether COVID-19 can amount to frustration of a contract has been a thought-provoking question of late.

In the present case, the petitioner, Suneesh K was a bidder in the auction organised by the Travancore Devascom Board (Board) for the sale of pooja items and flower garlands. However, he failed to make some of the necessary payments to complete the transaction. Taking leverage of the inability to honour the contractual obligations, Suneesh K sought to wriggle out of the contract.

To this, the Kerala HC held that the occurrence of any commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification to wriggle out of the contractual obligations which was accepted with open eyes.

(Order available here.)

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